

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WRI GOLDEN STATE, LLC,

No. C-07-1480 WWS

Plaintiff,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

v.

SAVE MART SUPERMARKETS, d/b/a
FOOD MAXX,

Defendant

SAVE MART SUPERMARKETS, d/b/a
FOOD MAXX,

Counterclaimant

v.

WRI GOLDEN STATE, LLC,

Counterdefendant

This cause came on for a court trial on July 15, 2008, the parties having appeared through their respective counsel of record, and the Court, having heard the evidence and considered the statements of the parties made on the record, finds the facts and states the conclusions of law as follows:

1 1. On July 15, 2008, trial commenced with the Court inquiring of the parties as to
2 any resolved issues and the remaining issues to be tried in the case.

3 2. With respect to Plaintiff WRI Golden State, LLC's ("WRI") claim for declaratory
4 relief, Dan Muller, counsel of record for Save Mart Supermarkets, d/b/a Food Maxx ("Save
5 Mart"), conceded that Save Mart gave its approval to the exterior design, color, elevation,
6 site and building alterations with respect to the proposed Wal-Mart store, but stated that a
7 condition of such approval was the enforcement of Save Mart's exclusive use right, which
8 Save Mart claims was breached by WRI when it allegedly authorized the proposed Wal-
9 Mart store to sell food.

10 3. The Court specifically finds that on November 20, 2003, Save Mart approved in
11 writing the exterior design, color, elevation, site and building alterations in connection with
12 the proposed Wal-Mart store and that WRI's acceptance of Save Mart's consent on
13 January 20, 2004, constitutes an agreement and the approval of Save Mart with respect to
14 the exterior design, color, elevation, site and building alterations in connection with the
15 proposed Wal-Mart store. In addition, the Court finds that Save Mart has approved or is
16 deemed to have approved minor modifications to the Wal-Mart store front required by the
17 City of Santa Rosa, which modifications were sent by WRI to Save Mart on or about
18 August 30, 2006.

19 4. In light of Save Mart's concession that it was no longer contesting the efficacy of
20 its approvals of the building modifications proposed for the Wal-Mart store, with the
21 exception of the alleged breach of the exclusive use provision of Save Mart's lease, the
22 Court proceeded to take evidence as to Save Mart's claim that WRI breached the exclusive
23 use provision of Save Mart's lease in leasing to Wal-Mart.

24 5. To support its claim that WRI authorized Wal-Mart to conduct business in
25 violation of the exclusive use provision of its lease, Save Mart provided the deposition
26 testimony of Neil Soskin, the Director of Leasing for Weingarten Realty Management.
27 Save Mart also referenced a Draft Environmental Impact Report prepared in connection
28 with the proposed Wal-Mart store, which contains a general description of a food area

1 within the proposed store. Based on the evidence presented and argument of counsel, the
2 Court finds that there is insufficient evidence from which the Court can determine the
3 nature and extent of future food sales by Wal-Mart, if any, at the Stony Point Plaza
4 Shopping Center. Accordingly there is no genuine controversy to support the issuance of a
5 declaratory judgment.

6 6. Based on the concessions of Save Mart and the Court's determination that Save
7 Mart presented insufficient evidence to sustain its claim for breach of its lease by WRI, the
8 Court finds:

9 (a) Defendant Save Mart has fully exercised any and all approval rights with
10 respect to the exterior design, color, elevation, site and building alterations with respect to
11 a proposed Wal-Mart store in the Stony Point Plaza Shopping Center located at Stony
12 Point Road and California State Highway 12 in Santa Rosa, California. The Court finds
13 that on November 20, 2003, Save Mart approved in writing the exterior design, color,
14 elevation, site and building alterations in connection with the proposed Wal-Mart store and
15 that WRI's acceptance of Save Mart's consent on January 20, 2004, constitutes an
16 agreement and the approval of Save Mart with respect to the exterior design, color,
17 elevation, site and building alterations in connection with the proposed Wal-Mart store. In
18 addition, the Court finds that Save Mart has approved or is deemed to have approved
19 minor modifications to the Wal-Mart store front required by the City of Santa Rosa, which
20 modifications were sent by WRI to Save Mart on or about August 30, 2006; and,

21 (b) Save Mart's counterclaim for declaratory and injunctive relief is dismissed
22 without prejudice for lack of a genuine case or controversy.

23
24 **IT IS SO ORDERED.**

25
26 Dated: July 31, 2008

27 /s/ William W Schwarzer
28 WILLIAM W SCHWARZER
United States District Judge